



**2022 Kansas Legislative Session
Weekly Legislative & Regulatory Update
Week 4**

At a Glance

- Ad Astra 2 Congressional map heads to the Governor
- Mega Mystery bill passes Senate, heads to House
- House tees up Sales Tax bills last week, Senate this week
- Senate considers suite of legislation usurping private property rights & local control to halt renewable energy industry development
- Water, HCR and CCR are moving

Looking Ahead

- 1 February – Senate Tax Committee hearings on food sales tax bills
- 1 February – Modular Nuclear Presentation House Energy & Utilities
- 2 February – Utility sales tax rate for C&I customers in Senate Tax
- 3 February – SPP Presentation in House & Senate Utilities

Redistricting & Mega Mystery Continue to Lead the Way

Redistricting, passing the budget and a tax relief bill were the top three priorities of the legislative session. Leadership hoped to begin session, swiftly move through the creation and passage of the new Congressional, House and Senate districts map process, turn to tax relief and adjourn perhaps slightly earlier this session since it is an election year. The pace around the building is rapid and feverpitched to be sure.

The new proposed Congressional map, referred to as Ad Astra 2, contained in SB 355, was passed by the Senate and the House last week and was sent to Governor Kelly for her consideration. Due to intrastate population change, it was known that the 3rd Congressional District which is largely Johnson and Wyandotte counties would change – perhaps becoming more compact. The Manhattan area saw growth which could be offset by population loss in other parts of the Big 1st and the Sedgwick County area saw some population growth as well which could adjust the boundaries of the 4th Congressional district. Changes to the 2nd would occur as the borders to the other districts morphed.

Wyandotte County is physically bisected by I-70. Ad Astra 2 follows that bisection and places the northern portion of the county into the 2nd Congressional

District while leaving the southern portion of Wyandotte into the 3rd Congressional District which would still include Johnson County, but would shift further south and pick up Miami, Franklin and Anderson counties. Wyandotte is the smallest in size of the 105 counties so carving it up was an interesting decision. An alternative could have been to leave Wyandotte County intact with the majority of Johnson County as the 3rd Congressional District and shift the southern end of Johnson into the 2nd District. Keeping the core of the Metro together was the request of more than 500 public comments during the redistricting hearings.

Ad Astra 2 passed on a largely party line vote in both the House (79-37) and Senate (26-9) but was short of the two-thirds vote (84 and 27) needed to create a veto-proof majority. There were however 9 lawmakers that did not vote in the House and 5 that did not vote in the Senate. For a variety of reasons, it is likely that lawsuits will be filed contesting the Congressional maps – largely because of the way Wyandotte and Johnson counties were split thus not keeping “communities of interest” intact. There are also objections to placing Lawrence in the Big First which would also mean both KU and K-State would be in the same congressional district and politically diluting the political strength of the largest two Regents institutions. It is likely that Governor Kelly vetoes the Ad Astra 2 map which would give way to a veto override effort in order to send the maps to the Kansas Supreme Court for review.

A decade ago, in the 2012 redistricting process, the Kansas Supreme Court never received maps for consideration as the Kansas Legislature and Governor failed to reach agreement on potential new Congressional, House and Senate maps. A lawsuit was filed in federal court and a three-judge panel of the federal district court was tasked with creating the three new maps. Probably because of the unique 2012 process, the Kansas Officer of the Revisor of Statutes in a March 10, 2021 memo outlined the process for affirming the redistricting maps as found in the Kansas Constitution:

- Reapportionment bills are required to be effective upon publication in the Kansas Register.
- Within 15 days of publication, the Kansas Attorney General petitions the Kansas Supreme Court to determine the validity of the maps.
- The Kansas Supreme Court must render a decision within thirty days.
- If the plan is held invalid, the Legislature must enact a valid plan within 15 days subject again to petition by the Kansas Supreme Court and Court review.

Senate and House district maps are still in the process of being drawn. So, there is a lot of action and debate still to come.

To the spending side of the ledger, the House Tax Committee took up two bills last week that would take the state sale tax to 0%. The two bills come with different fiscal notes. The first bill HB 2484 (which tracks with SB 339) defines food ingredients to include prepared food, food sold in dining establishments, candy, soft drinks, items sold in vending machines to name a few, comes with a higher fiscal note of \$655 million by 2024. HB 2487, the Governor's bill and companion to SB 342, more narrowly defines food ingredients by not including prepared food, candy, soda and the like, but does allow food sold at a farmer's market to be exempt from state sales tax. The projected fiscal note of HB 2487/SB 342 is closer to \$500 million by 2024.

With a statewide election looming, the Governor and the leading Republican candidate for Governor, Attorney General Derek Schmidt, have touted eliminating the state sales tax on food. Kansas' state sales tax rate is 6.5% and when coupled with local/county tax rates on food bring the effective tax rate on food to nearly 10% in some communities which is one of, if not, the highest in the nation. Governor Kelly, in her State of the State speech asked the Legislature to send her a clean bill - only 13 words - to be sent to her desk by Kansas Day (which was Saturday, January 29th), that would eliminate the state sales tax on food. While that didn't happen, bills are being deliberated. The Senate Assessment & Taxation Committee is slated to hold hearings on SB 339 and SB 342 on Tuesday, February 1st.

There are groups however that would like to see more broad sales tax relief rather than just for food. SB 328 would lower the state sales tax rate across the board to 4.75%.

In addition, SB 359, which is scheduled for a hearing in Senate Assessment & Taxation Committee on Wednesday, February 2nd, would adjust the state sales tax rate on utility services for commercial/industrial customers to 0% while continuing to allow local governments to adjust their rate accordingly. Currently state law sets the state sales tax on residential utility service (electric, gas and water) at 0%.

The State is sitting on a nice financial cushion so there is a desire to provide financial relief to Kansans. The challenge is getting the financial balance right. The above-described bills all carry sizable fiscal notes that are annual losses of revenue to the State. It is not likely that the State could sustain the loss in revenue associated with some or a combination of bills. The House Tax Committee will likely take the lead on the sales tax bills.

Two other topics last week took up a lot of bandwidth in the Senate. The first was SB 347 which would provide a suite of tax incentives to keep Kansas in contention for a potential \$4B manufacturing facility on the eastern side of the State. The Senate passed

the bill 32-7 despite some objections from lawmakers about the lack of public information about the potential company or industry seeking the incentives. Lawmakers could learn the details if they were willing to sign a non-disclosure agreement. Kansas is one of two states that remains in final contention. There is a mid-February selection timeframe with an early March announcement so lawmakers are fast-tracking deliberation of the \$1 billion incentive package. The House Commerce Committee is taking the bill up today, Monday, January 31st and could work the measure quickly.

The other issue that received a great deal of attention in the Senate last week was hearings on three bills that would effectively halt all renewable energy investment in Kansas. Senator Mike Thompson (R-Shawnee) is the Chair of the Senate Utilities Committee. He has introduced six separate bills with a couple more likely to come that would have a dramatic impact on private property rights, local zoning laws, upend a century of established property right case-law, circumvent local control, and undo parity in state energy tax law. Hearings were held on three of the bills last week – SB 325 was heard in Senate Local Government Committee, SB 323 was heard in Senate Utilities on Wednesday and SB 324 was heard in Senate Utilities on Thursday. We will see what the next steps will be. Senator Thompson introduced a mega bill, SB 279, during the 2021 session which stalled in his committee due to the weight of the bill.

The House Energy & Utilities Committee held a hearing last Thursday on HCR 5023 which supports ongoing federal and state investigations into price gouging during the February 2021 Winter Storm Uri event. There was one conferee, the Citizens Utility Ratepayer Board, which supported the measure. CURB was complimentary to the actions taken by the electric and gas utilities during those critical days to keep the lights on and the heat flowing. The Committee is expected to pass the resolution this week.

Session of 2022
House Concurrent Resolution No. 5023
By Committee on Energy, Utilities and Telecommunications
1-19

1 A CONCURRENT RESOLUTION denouncing price gouging and market
2 manipulation in the natural gas marketplace and supporting
3 investigations into the extraordinary price increases of wholesale
4 natural gas during the extreme cold weather event of February 2021.
5
6 WHEREAS, The State of Kansas was gripped by an historic stretch of
7 cold temperatures when a persistent arctic airmass settled across the
8 region from February 6, 2021, through February 18, 2021; and
9 WHEREAS, The extreme stretch of cold weather sent the wholesale
10 price of natural gas skyrocketing, which led to significant spikes in
11 natural gas and electricity prices for all Kansans; and
12 WHEREAS, During the 2021 legislative session, the Kansas
13 Legislature took immediate action to alleviate the drastic financial
14 impacts caused by the spike in utility costs by authorizing financial relief
15 options for wholesale natural gas customers of the state through the
16 authorization of loan programs for extraordinary utility costs; and
17 WHEREAS, All Kansans will continue to experience significant
18 financial impacts from the cold weather event as the unprecedented utility
19 costs are passed through to Kansas utility customers over the next decade;
20 and
21 WHEREAS, The Attorney General of the State of Kansas possesses
22 legal authority to investigate and take corrective action if any natural gas
23 or utility price increases were a result of profiteering during a natural
24 disaster; and
25 WHEREAS, Currently, the Attorney General has announced that the
26 Office of the Attorney General is investigating whether any such
27 profiteering occurred and whether any corrective action is justified; and
28 WHEREAS, The Federal Energy Regulatory Commission possesses
29 legal authority to investigate natural gas market behavior and take
30 corrective action if a market participant participated in price gouging or
31 market manipulation; and
32 WHEREAS, Currently, the Federal Energy Regulatory Commission is
33 investigating potential instances of natural gas market manipulation
34 during the cold weather event and continues to review actions of market
35 participants during such cold weather event to determine whether further
36 investigations are merited; and

HCR 5023 2

1 WHEREAS, Should any such state or federal investigations lead to
2 corrective action or settlement, the state and federal entities that oversee
3 the provision of public utility services, including, but not limited to, the
4 Kansas Corporation Commission, the Federal Energy Regulatory
5 Commission, cooperatives and municipalities, are strongly encouraged to
6 protect the interests of affected ratepayers: Now, therefore,
7 *Be it resolved by the House of Representatives of the State of Kansas,*
8 *the Senate concurring therein:* That the Kansas Legislature denounces
9 any and all instances of price gouging and market manipulation in the
10 natural gas marketplace and, specifically, any such instances that
11 occurred during the extreme cold weather event of February 2021 when
12 the provision of utility services were of paramount importance for
13 Kansans; and
14 *Be it further resolved:* That the Kansas Legislature supports the
15 ongoing state and federal efforts to investigate the significant increases to
16 the price of wholesale natural gas during the extreme cold weather event
17 of February 2021 and stands ready to assist in those efforts, if necessary;
18 and
19 *Be it further resolved:* That the Kansas Legislature encourages efforts
20 to protect the interests of affected Kansas utility ratepayers should any
21 investigation lead to corrective action or settlement; and
22 *Be it further resolved:* That the Secretary of State shall send an
23 enrolled copy of this resolution to each member of congress from Kansas,
24 the chairperson of the Federal Energy Regulatory Commission and the
25 Attorney General of the State of Kansas.

Based on the calendars for the week, it appears week four will look more like a normal session week with briefings continued for many of the committees while the budget writing committees really get geared up. Perhaps the most interesting item, is that the House Water Committee is only slated to meet on Monday, January 31st. The rest of the week is on “Call of the Chair”. Since the Water Committee’s first meeting last year, the committee has worked diligently not taking a day off of informational briefings or consideration of a bill. We are expecting a 400-plus page bill that would fundamentally change water law, administration and organization in Kansas. So it is likely the week’s schedule will change soon when the bill is officially put in the public domain. There are however significant legislative deadlines looming, but very heavy issues included in the water bill that will require significant deliberation by lawmakers and stakeholder groups.

Lastly, SB 417, related to the Coal Combustion Residual rule, was introduced. The bill is being requested by Evergy, Sunflower and Kansas City Board of Public Utilities to allow KDH&E to increase the fees on the above three utilities to maintain the state-run CCR program in lieu of a federal/EPA created and run program.

Also, we can’t forget the two-days of hearings where people showed up in white coats as if they were doctors, to testify on legislation allowing for off-label drugs to be used with liability removed to treat COVID-19 patients. However on Thursday, legislation was introduced to allow for full-practice authority for APRNs in Kansas. This would codify and slightly expand the authority granted during the COVID pandemic to APRNs and allow them to practice to the fullest extent of their training.

As always, please call/email or text anytime with questions! We are here to help!

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